

Exhibit K



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January 25, 2021

Via Email and Federal Express

Freedom of Information Act Officer
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
Email: foiaapa@sec.gov

Re: Freedom of Information Act Request for Records Relating to the Ether Determination and Letters Regarding Chinese Control of Cryptocurrencies

Dear Sir or Madam:

This letter constitutes a request (“Request”) pursuant to the Freedom of Information Act, 5 U.S.C. § 552 et seq. (“FOIA”) and implementing regulations, 17 C.F.R. § 200.80 et seq., Ripple, through its undersigned counsel, submits this Request.

I. **Background**

A. **Determination that ether was not a security.**

Originally conceived by Vitalik Buterin, ether is the native digital asset of the Ethereum blockchain. Buterin published the Ethereum Whitepaper in 2013, endeavoring to create an “alternative protocol for building decentralized applications.”¹ Ether is necessary to perform any actions on the Ethereum network, as using an Ethereum application or sending ether on the blockchain requires the payment of a small fee in ether.² In the Ethereum system transactions are monitored by miners, who receive payment in small amounts of newly-issued ether.³

Since July 2014, the Ethereum ecosystem has been supported by the Ethereum Foundation, a non-profit organization which claims to be “one part of a much larger ecosystem” that funds development of Ethereum-related technologies.⁴ Through the Ecosystem Support Program, the Ethereum Foundation gives grants to support projects such as Uniswap, an automated market maker, or ethers.js, a JavaScript library designed

¹ Ethereum Whitepaper, <https://ethereum.org/en/whitepaper/> (last visited Jan. 12, 2021).

² What is Ether (ETH)?, <https://ethereum.org/en/eth/> (last visited Jan. 12, 2021).

³ *Id.*

⁴ About the Ethereum Foundation, <https://ethereum.org/en/foundation/> (last visited Jan. 13, 2021); *see also* Ethereum Foundation, Crunchbase <https://www.crunchbase.com/organization/ethereum>.

to interact with Ethereum.⁵ The Ethereum Foundation provides “financial and non-financial support” to the Ethereum community “in order to accelerate the growth of the ecosystem.”⁶ The website of the Ethereum Foundation, ethereum.org, educates the public about ether and directs visitors to where ether can be purchased.⁷

From July 22, 2014 to September 2, 2014, Buterin and the Ethereum Foundation conducted a fundraising sale of “premined” ether tokens.⁸ The ether purchased was not usable or transferable by purchasers at the time of sale; instead, purchasers had to wait until the launch of Ethereum on July 30, 2015,⁹ in order to use the asset.¹⁰ The ether was sold by the Ethereum Foundation at a discounted price during the forty-two day fundraising sale.¹¹ The Ethereum Foundation sold 60 million ether to the public and raised more than \$18.3 million.¹² Twelve million ether was given to the Ethereum Foundation and other participants of the Ethereum ecosystem.¹³ The 72 million ether that was either sold to the public prior to the launch of the Ethereum blockchain or provided to the Ethereum Foundation has a market value today of over \$95 billion and represents the majority of ether currently trading in the secondary market.

In addition to the Ethereum Foundation, ConsenSys is a private company founded in October 2014 by Ethereum co-founder Joseph Lubin to focus on further development and advancement of the Ethereum software.¹⁴ ConsenSys’ mission is to “enable[] developers, enterprises, and people worldwide to build next-generation applications, launch modern financial infrastructure, and access the decentralized web.”¹⁵ To Ripple’s knowledge, the amount of ether held by either ConsenSys or Mr. Lubin is not publically available.

⁵ Featured projects, Ecosystem Support, <https://esp.ethereum.foundation/en/projects/> (last visited Jan. 19, 2021).

⁶ *Id.*

⁷ Where to buy ETH, <https://ethereum.org/en/get-eth/> (last visited Jan. 13, 2021).

⁸ See Vitalik Buterin, *Launching the Ether Sale*, Ethereum Blog (July 22, 2014), <https://blog.ethereum.org/2014/07/22/launching-the-ether-sale/>.

⁹ Stephan Tual, *Ethereum Launches*, Ethereum Blog (July 30, 2015), <https://blog.ethereum.org/2015/07/30/ethereum-launches/>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Kate Rooney, *Ethereum falls on report that the second-biggest cryptocurrency is under regulatory scrutiny*, CNBC (May 1, 2018), <https://www.cnbc.com/2018/05/01/ethereum-falls-on-report-second-biggest-cryptocurrency-is-under-regulatory-scrutiny.html>.

¹³ The Ethereum Foundation retained 6 million for operational costs, 3 million was given to 85 developers who contributed to the Ethereum Project, and 3 million was given to the Developer Purchase Program which enabled some members of the Ethereum Foundation to buy ether at the initial crowdsale price. *An Introduction to Ethereum*, Grayscale Building Blocks (Feb. 2020), <https://grayscale.co/wp-content/uploads/2020/02/Grayscale-Building-Blocks-Ethereum-February-2020.pdf>.

¹⁴ See About Us, ConsenSys, <https://consensys.net/about/> (last visited Jan. 20, 2021); ConsenSys, Crunchbase, <https://www.crunchbase.com/organization/consensus-systems>.

¹⁵ Year in Review 2020, ConsenSys, <https://consensys.net/year-in-review-2020/>.

ConsenSys has adopted a “hub-and-spoke” model, in which ConsenSys functions as the central “hub” that “spawns, incubates, and accelerates” various ventures (the “spokes”), which create new products and services built on the Ethereum blockchain with the benefit of certain “foundational components built by ConsenSys.”¹⁶

In June 2018, then-Director of the Division of Corporation Finance William Hinman announced that, in his view, ether was not a security in its current state.¹⁷ “Putting aside” the fundraising undertaken by the Ethereum Foundation a few years ago and “based on [his] understanding of the present state of Ether, the Ethereum network and its decentralized structure, current offers and sales of Ether are not securities transactions.”¹⁸ In comparing ether to bitcoin, Director Hinman stated that “applying the disclosure regime of the federal securities laws to current transactions in Ether would seem to add little value.”¹⁹

We are not aware of other public statements by the Commission nor Director Hinman further explaining the rationale behind the view that ether was not a security. Today, ether is the second-largest cryptocurrency by market capitalization, after bitcoin.²⁰

B. Letters regarding Chinese control of bitcoin and ether.

Multiple news outlets have reported on letters that former SEC Chairman Clayton received regarding national security-related concerns over China’s control of bitcoin and ether, both digital assets that the SEC has declared are not securities.

1. November 2020 Letter from Director of National Intelligence John Ratcliffe to Chairman Clayton

In November 2020, Director of National Intelligence John Ratcliffe reportedly wrote a letter to Chairman Clayton raising concerns over China’s influence over digital currency,²¹ including that more than half of the “mining” operations in the world are located in China,²² and that China’s control over these operations and the government’s

¹⁶ See ConsenSys Monthly Report – Feb. 2019 (Mar. 4, 2019), <https://media.consensys.net/consensys-monthly-report-february-2019-739db290cbd>.

¹⁷ See Director William Hinman, Division of Corporation Finance, Remarks at the Yahoo Finance All Markets Summit: Crypto, *Digital Asset Transactions: When Howey Met Gary (Plastic)*, (June 14, 2018), <https://www.sec.gov/news/speech/speech-hinman-061418>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See All Cryptocurrencies, CoinMarketCap, <https://coinmarketcap.com/all/views/all/> (last visited Jan. 12, 2021).

²¹ Jerry Dunleavy, *Trump spy chief seeks SEC scrutiny of Chinese dominance in cryptocurrency*, Washington Examiner (Nov. 25, 2020), <https://www.washingtonexaminer.com/news/trump-spy-chief-seeks-sec-scrutiny-of-chinese-dominance-in-cryptocurrency>.

²² *Id.*

possible decision to create a state-controlled digital currency posed a threat to U.S.-based companies.²³

2. Summer 2020 Letter from Senator Tom Cotton to Chairman Clayton

According to public reports, attached to Director Ratcliffe's November 2020 letter to Chairman Clayton was a letter addressed to Chairman Clayton from Senator Cotton sent in the summer of 2020.²⁴

3. July 2020 Letter from Senator Tom Cotton to Director of National Intelligence John Ratcliffe and National Security Advisor Robert O'Brien

In July 2020, Senator Cotton reportedly wrote to Director Ratcliffe and National Security Advisor O'Brien regarding how the lack of clarity in the digital asset space "hurts U.S.-developed digital assets" and "puts American national and economic security gravely at risk."²⁵

4. December 2018 Letter from Senator Tom Cotton to Chairman Clayton

In December 2018, Senator Cotton reportedly wrote Chairman Clayton about his concerns regarding the regulation of digital assets.²⁶

II. **Records Requested**

Ripple requests disclosure of:

1. All records²⁷ relating to the June 14, 2018 statements by then-Director Hinman regarding ether's status under U.S. securities laws, including but not limited to
 - a. all communications with the Ethereum Foundation and/or other relevant companies (including, but not limited to, ConsenSys) or individuals in the ether ecosystem (including but not limited to, Vitalik Buterin, Anthony Di Iorio, Charles Hoskinson, Mihai Alisie, Amir Chetrit, Joseph Lubin, Gavin

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ For the purpose of this request, the term "records" includes any and all reports, statements, examinations, memoranda, correspondence, notes, indices, audio or video recordings, digital files, or other records. In the event that such records once existed but have now been destroyed, please disclose any records that are integrally related to, summarize, or are interchangeable with said records.

Wood and Jeffrey Wilcke), or any attorneys or other individuals representing the Ethereum Foundation or other relevant companies or individuals in the ether ecosystem, and

- b. all documents, including internal communications, analyses, and other materials, that were prepared or relied upon by Director Hinman, or any other current or former Division Director, Staff, or Commissioner in reaching the determination that ether is not a security, including drafts of Director Hinman's statements regarding ether and analyses prepared by SEC staff.
2. The letters referenced above ("the Letters") that are in the custody, control or possession of the SEC, including:
- a. the November 2020 letter from Director Ratcliffe to Chairman Clayton;
 - b. the Summer 2020 letter from Senator Cotton to Chairman Clayton;
 - c. the July 2020 letter from Senator Cotton to Director Ratcliffe and National Security Advisor O'Brien; and
 - d. the December 2018 letter from Senator Cotton to Chairman Clayton.
3. Any documents prepared by the Staff or Commissioners relating to the Letters.
4. Any documents prepared by the Staff or Commissioners regarding the potential environmental impact of digital assets (including but not limited to bitcoin and ether).

* * * * *

Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we look forward to your reply to the Request for disclosure within twenty days.

Ripple requests that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

If this Request is denied in whole or in part, we ask that you justify all denials by reference to specific exemptions of the FOIA. We expect release of all segregable portions of otherwise exempt material. *See* 5 U.S.C. § 552(b). We also reserve the right to appeal any decision in relation to this Request.

Ripple is willing to pay fees for this request up to a maximum of \$61. If you estimate that the fees will exceed this limit, please inform us first.

Thank you for your attention to this Request.

Sincerely,

A handwritten signature in dark ink, appearing to read "Andrew Ceresney". The signature is fluid and cursive, with a long horizontal stroke at the end.

Andrew Ceresney
Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022

Counsel for Ripple Labs, Inc.